

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MABEL LAWRENCE,

Plaintiff,

v.

JO ANNE B. BARNHART,
Commissioner of Social
Security,

Defendant.

NO. CV-04-185-MWL

ORDER ADOPTING REPORT AND
RECOMMENDATION TO REMAND FOR
FURTHER PROCEEDINGS

BEFORE THE COURT is Plaintiff's motion for summary judgment (Ct. Rec. 6) and defendant's motion to remand. (Ct. Rec.14.) On April 5, 2005, Magistrate Judge Michael Leavitt filed a report and recommendation to grant defendant's motion to remand for further administrative proceedings. (Ct. Rec. 17.) Plaintiff timely filed objections. (Ct. Rec. 18.) Plaintiff is represented by Amy Gilbrough and the Commissioner by Special Assistant United States Attorney Carol Hoch. The parties did not consent to proceed before a United States Magistrate Judge. The report and recommendation (Ct. Rec. 17) is **ADOPTED** in its entirety.

Plaintiff moved the court for an order of remand for immediate payment of benefits. (Ct. Rec. 6, 16.) The magistrate judge's report

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1 found that the ALJ failed to give adequate reasons for failing to fully
2 credit plaintiff's testimony. (Ct. Rec. 17.) Plaintiff contends that if
3 her testimony is fully credited, she is limited to sedentary work. (Ct.
4 Rec. 18.)

5 Plaintiff misconstrues the role of the reviewing court. The ALJ is
6 not required to fully credit the Plaintiff's testimony, but he is
7 required to adequately explain why it has not been fully credited. And,
8 even if this Court could properly fully credit plaintiff's credibility,
9 her asserted ability to perform work at a sedentary level would require
10 a finding that she is not disabled. Plaintiff's first objection to the
11 report is unavailing.

12 Plaintiff notes that the Magistrate Judge found that the ALJ did
13 not properly address several medical opinions. (Ct. Rec. 18 at 3-4.)
14 Some of these opinions favor a finding of disability and some do not.
15 (Ct. Rec. 17 at 9.) For this reason remand for further administrative
16 proceedings is appropriate.

17 Plaintiff acknowledges that the Court has discretion to determine
18 whether a case should be remanded for a finding of disability or for
19 further administrative proceedings. (Ct. Rec. 18 at 4.) The medical
20 record is inconsistent and credibility must be reassessed. These are
21 tasks appropriately undertaken by the agency rather than the reviewing
22 court; accordingly, the case should be remanded for further
23 administrative proceedings.

24 For the reasons stated above, the report and recommendation filed
25 by the Magistrate Judge (Ct. Rec. 17) **IS HEREBY ADOPTED** in its entirety.

1 **IT IS ORDERED** that the District Court Executive **SHALL FILE** this
2 Order and serve copies of it on the parties.

3 **DATED** this 22ND day of April, 2005.

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5 s/ ROBERT H. WHALEY
6 UNITED STATES DISTRICT COURT JUDGE
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